

**AGREEMENT FOR GOODS PROVIDED OR SERVICES PERFORMED
BY AND BETWEEN THE DEPARTMENT OF HEALTH SERVICES,
STATE OF WISCONSIN,
AND**

This Agreement ("Agreement"), dated [Click here to enter a date.](#), is made and entered into by and between the Department of Health Services (DHS), State of Wisconsin ("the State") and ("the Contractor"), hereinafter collectively referred to as "the parties."

WHEREAS, DHS issued a (RFB/RFP) # on [Click here to enter a date.](#) soliciting bids for Goods to be delivered to and/or Services to be performed on behalf of DHS, and as described therein as .

WHEREAS, Contractor responded to said solicitation, and DHS has elected to enter into an arrangement whereby Contractor will provide the itemized Services/Goods,

NOW, THEREFORE, in consideration of the mutual responsibilities and agreements set forth herein and in any Exhibits attached hereto and incorporated herein by reference, DHS and Contractor agree as follows:

1. **SCOPE OF THIS AGREEMENT.** This Agreement states the terms and conditions under which the Contractor will provide:
2. **DESCRIPTION OF WORK AND RESPONSIBILITIES.**
 - 2.1. Description of Work:
 - 2.2. Description of Measurable Objectives (SMART Objectives):
 - 2.3. Responsibilities
 - 2.3.1 Contractor Responsibilities:
 - 2.3.2 State Responsibilities:
3. **SPECIFIC REQUIREMENTS, SPECIAL CONDITIONS, and CONSIDERATIONS.**
 - 3.1 [\(ie staffing levels, database requirements, hotlines, business hours\)](#)
 - 3.2 [\(as needed\)](#)
4. **DELIVERABLES.** Contractor will produce the Deliverables in accordance with the terms of this Agreement. Upon the State's acceptance and payment of each deliverable the Contractor will assign to the State all rights in and to the deliverable.
 - 4.1 Defined/described Deliverables:
 - 4.2 Specific Measurable Objectives and Expected Outcomes:
 - 4.3 Contractor shall have thirty (30) business days to complete any corrective actions or changes in order for such Deliverable to conform in all material respects with the requirements therefore set forth in this Agreement. The count of such business days shall begin on the first business day following Contractor's receipt of the written statement of required corrective actions or changes.
 - 4.4 The State shall have ten (10) business days to complete a review of the corrective actions or changes made to the Deliverable in response to the State's written statement of deficiencies and notify Contractor in writing of acceptance or rejection. The count of such days shall begin on the first business day after the State receives the corrected or changed Deliverable from Contractor. The State's review and approval of such corrected or changed Deliverable shall be solely for

the purpose of determining that corrections have been made to bring the Deliverables into compliance in all material respects with the acceptance criteria set forth and not for any other purpose, including, without limitation, for format, style or the incorporation of additional ideas or functionality.

- 4.5 The State and Contractor may mutually agree to extend the period of time allotted for any review, correction, or change under this Paragraph. Any such extension of time shall extend the schedule for subsequent Deliverables by a corresponding amount. All such extensions shall be done by written agreement.
- 4.6 If Contractor is unable to correct any deficiency in a Deliverable within the period of time set forth above, the State shall be entitled, at its option, to a refund or credit of fees paid to Contractor hereunder with respect to the services giving rise to the claimed deficiency.

5. **AGREEMENT INCORPORATION.** The parties specifically acknowledge and accept the incorporation of the (RFB/RFP) dated [Click here to enter a date.](#), as an integral and critical provision of this Agreement. The parties further acknowledge and accept the description of Goods to be provided or Services to be performed, as well as the terms and conditions as set forth in said (RFP/RFB/and/or other documents) so incorporated, as having the full force and effect as if expressly set forth herein.

This Agreement, together with all incorporated portions thereto, constitutes the entire agreement by and between the parties. Any amendment to this Agreement shall be in writing and signed by all parties. This Agreement may be executed in two or more counterparts, each of which will be deemed an original.

Following is the order of precedence in the event that a conflict or dispute arises among the documents comprising this Agreement, or issued thereunder:

- 5.1 This Agreement, including definitions, Attachment A (Business Associate Agreement), Attachment B (Performance Bond Form), and any additional Attachments (identify Attachments)
- 5.2 (Solicitation Number), including all posted Q and A documents, amendments, and addenda
- 5.3 Contractor's Proposal in response to (Solicitation Number)

6. **APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of Wisconsin. The Contractor shall at all times comply with and observe all federal and state laws which are in effect during the period of this contract and which in any manner affect the work or its conduct. The State reserves the right to cancel this contract with any federally debarred Contractor or a Contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts. Any actions arising under this Contract shall be venued in the Circuit Court of Dane County, Wisconsin or in the federal court in the Western District of Wisconsin.
7. **TERM.** The initial term of this Agreement shall be from [Click here to enter a date.](#) to [Click here to enter a date.](#) This Agreement is eligible for (number) one-year renewals by mutual agreement in writing, executed 60 days prior to the expiration date, unless terminated as provided herein.
8. **TERMINATION FOR CAUSE.** DHS may terminate this Agreement after providing the Contractor with days written notice of the Contractor's right to cure a failure of the Contractor to perform under the terms of this Agreement.

The Contractor may terminate this Agreement after providing DHS with _____ days written notice of DHS' right to cure its failure to perform under the terms of this Agreement.

Upon the termination of this Agreement for any reason, or upon Agreement expiration, each party shall be released from all obligations to the other party arising after the date of termination or expiration, except for those that by their terms survive such termination or expiration.

9. **TERMINATION FOR CONVENIENCE.** Either party may terminate this Agreement at any time, without cause, by providing a written notice to the other party at least _____ days in advance of the intended date of termination.

In the event of termination for convenience, the Contractor shall be entitled to receive compensation for any fees owed under the Agreement for Goods provided or Services performed. The Contractor shall also be compensated for partially completed Services. In this event, compensation for such partially completed Services shall be no more than the percentage of completion of the Services requested, at the sole discretion of DHS, multiplied by the corresponding payment for completion of such Services as set forth in the Agreement. Alternatively, at the sole discretion of DHS, the Contractor may be compensated for the actual Service hours provided. DHS shall be entitled to a refund for Goods or Services paid for but not received or implemented, such refund to be paid within 30 days' written notice to the Contractor requesting the refund.

10. **AGREEMENT CANCELLATION.** DHS reserves the right to cancel this Agreement, in whole or in part, without penalty if the Contractor:

- 10.1 Fails to perform any material obligation required under the Agreement;
- 10.2 Files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity;
- 10.3 Makes an assignment for the benefit of creditors;
- 10.4 Fails to follow the sales and use tax certification requirements of s. 77.66, Wisconsin Statutes;
- 10.5 Incurs a delinquent Wisconsin tax liability;
- 10.6 Fails to submit a non-discrimination or affirmative action plan as required herein;
- 10.7 Fails to follow the non-discrimination or affirmative action requirements of Chapter 111, subch. II, Wisconsin Statutes (Wisconsin's Fair Employment Law);
- 10.8 Becomes a state or federally debarred contractor;
- 10.9 Is excluded from federal contracts;
- 10.10 Fails to maintain and keep in force all required insurance, permits and licenses as provided in this Contract;
- 10.11 Fails to maintain the confidentiality of the State's information that is considered to be Confidential Information, proprietary, or containing Personally Identifiable Information, or otherwise breach the terms of the Business Associate Agreement (Attachment A);
- 10.12 If at any time the Contractor's performance threatens the health or safety of a State employee, citizen, or customer;
- 10.13 Any other failure of the Contractor as determined by the State.

11. **CONTRACTOR COMPLIANCE.** The Contractor shall at all times comply with and observe all federal, State, and local laws, ordinances, and regulations that are in effect during the term of this Agreement that may affect the Contractor's work or obligations hereunder.

12. **HIPAA COMPLIANCE.** Contractor agrees to comply with the federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to the extent those regulations apply to the Services the Contractor provides or purchases with funds provided under this Agreement.

Certain programs included in this Agreement are defined as “Health Plans” within HIPAA rules. As such, DHS must comply with all provisions of the law and has deemed that Contractor is a “Business Associate” within the context of the law. As a result, DHS requires Contractor to sign and return with this Agreement the Business Associate Agreement, included as Attachment A of this Agreement, and fully incorporated herein by this reference.

13. **NON-APPROPRIATION.** DHS reserves the right to cancel this Agreement in writing, in whole or in part, without penalty, if the Wisconsin Legislature, United States Congress, or any other direct funding entity contributing to the financial support of this contract fails to appropriate funds necessary to complete the Agreement.
14. **PAYMENT OFFSETS FOR CONTRACTOR’S DELINQUENCY.** DHS shall offset payments made to the Contractor under this Agreement in an amount necessary to satisfy a certified or verifiable delinquent payment owed to the State or any state or local unit of government. DHS also reserves the right to cancel this Agreement as provided in Section 10, Agreement Cancellation, if the delinquency is not satisfied by the offset or other means during the Agreement Term.
15. **CONFIDENTIAL, PROPRIETARY, AND PERSONALLY IDENTIFIABLE INFORMATION.** In connection with the performance of work hereunder, it may be necessary for DHS to disclose to Contractor certain information that is considered to be Confidential, Proprietary, or containing Personally Identifiable Information (“Confidential Information”). The Contractor shall not use such Confidential Information for any purpose other than the limited purposes set forth in this Agreement, and all related and necessary actions taken in fulfillment of the obligations herein. The Contractor shall hold all Confidential Information in confidence, and shall not disclose such Confidential Information to any persons other than those directors, officers, employees, and agents who have a business-related need to have access to such Confidential Information in furtherance of the limited purposes of this Agreement and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Agreement.

Contractor shall institute and maintain such security procedures as are commercially reasonable to maintain the confidentiality of the Confidential Information while in its possession or control including transportation, whether physically or electronically.

Contractor shall ensure that all indications of confidentiality contained on or included in any item of Confidential Information shall be reproduced by Contractor on any reproduction, modification, or translation of such Confidential Information. If requested by DHS, Contractor shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain Confidential Information of DHS, as directed.

The Contractor shall maintain all Confidential Information for a period of three (3) years from the date of termination or expiration of the Agreement term of this Agreement, and shall thereafter return or securely destroy said Confidential Information as directed by DHS.

Indemnification: In the event of a breach of this Section by Contractor, Contractor shall indemnify and hold harmless the State and any of its officers, employees, or agents from any claims arising from the acts or omissions of the Contractor, and its Subcontractors, employees and agents, in violation of this Section, including but not limited to, costs of monitoring the credit of all persons whose Confidential Information was disclosed, disallowances or penalties from federal oversight agencies, and any court costs, expenses, and reasonable attorney fees, incurred by the State in the enforcement of this Section.

Equitable Relief: The Contractor acknowledges and agrees that the unauthorized use, disclosure, or loss of Confidential Information may cause immediate and irreparable injury to the individuals whose information is disclosed and to the State, which injury will not be compensable by money damages and for which there is not an adequate remedy available by law. Accordingly, the parties specifically agree that the State, in its own behalf or on behalf of the affected individuals, may seek injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Agreement or under applicable law.

16. **REFUND OF CREDITS.** Within sixty (60) days of DHS' request, the Contractor shall pay to DHS any credits resulting from an order that DHS determines cannot be applied to future invoices. DHS shall determine the method of credit.

17. **NOTICE AND CHANGE OF CONTACT INFORMATION.** Any notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery or three (3) Business Days after mailing by postal service, certified or registered mail-receipt requested.

In the event the Contractor moves or updates contact information, the Contractor shall inform DHS of such changes in writing within ten (10) Business Days. DHS shall not be held responsible for payments on Purchase Orders delayed due to the Contractor's failure to provide such notice.

18. **EXAMINATION OF RECORDS.** DHS shall at any time during normal business hours, upon reasonable notice, have access to and the right to examine, audit, excerpt, transcribe, and copy, on Contractor's premises, any of the Contractor's records and computer data storage media involving transactions directly pertinent to this Agreement. If the material is on computer data storage media, the Contractor shall provide copies of the data storage media or a computer printout of such if DHS so requests. Any charges for copies of books, documents, papers, records, computer data storage media or computer printouts provided by the Contractor shall not exceed the actual cost to the Contractor. This provision shall survive the termination, cancellation, or expiration of this Agreement.

19. **BREACH NOT WAIVER.** A failure to exercise any right, or a delay in exercising any right, power or remedy hereunder on the part of either party shall not operate as a waiver thereof. Any express waiver shall be in writing and shall not affect any event or default other than the event or default specified in such waiver. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The making of any payment to the Contractor under this Agreement shall not constitute a waiver of default, evidence of proper Contractor performance, or Acceptance of any defective item or work furnished by the Contractor.

20. **CONTRACT AMENDMENT.** This Agreement may not be modified or amended except by mutual agreement of both parties in writing.

21. **SEVERABILITY.** If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall remain valid and in full force and effect. The invalid provision shall be replaced by a valid provision that comes closest in intent to the invalid provision.

22. **SOVEREIGN IMMUNITY.** Nothing in this Agreement shall be construed to constitute a waiver of the State's sovereign immunity under the Eleventh Amendment to the United States Constitution and Article IV, Section 27 of the Wisconsin Constitution.

23. **DISPUTE RESOLUTION.** In the event of any dispute or disagreement between the parties under this Agreement, whether with respect to the interpretation of any provision of this Agreement, or with respect to the performance of either party hereto, except for breach of Contractor's intellectual property rights, each party shall appoint a representative to meet for the purpose of endeavoring to resolve such dispute or negotiate for an adjustment to such provision. No legal action of any kind, except for the seeking of equitable relief in the case of the public's health, safety, or welfare, may begin in regard to the dispute until this dispute resolution procedure has been elevated to the Contractor's highest executive authority and the equivalent executive authority within the State, and either of the representatives, in good faith concludes, after a good faith attempt to resolve the dispute, that amicable resolution through continued negotiation of the matter at issue does not appear likely.
24. **NO QUANTITY GUARANTEES.** DHS may obtain related products and Services from other sources during the term of the Agreement. DHS makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products or Services will be procured through this Agreement.
25. **TERMINATION OF PURCHASE ORDER.** DHS may terminate a Purchase Order if it determines that the Contractor is unable to deliver the Services or provide the Goods required in a timely manner in order to meet the business needs of DHS.
26. **TIME IS OF THE ESSENCE.** Timely provision of the Goods or Services required under this Agreement shall be of the essence of the Agreement, including the provision of the Goods or Services within the time agreed or on a date specified herein.
27. **DEFAULT AND REMEDY.** If the Contractor fails to remedy any delay or other problem in its performance of this Agreement after receiving reasonable notice from DHS to do so, the Contractor shall reimburse DHS for all reasonable costs incurred as a direct consequence of the Contractor's delay, action, or inaction.

In case of failure to deliver Goods or Services in accordance with this Agreement, DHS, upon written notice to the Contractor, may procure such Goods or Services from other sources as necessary, and the Contractor shall be responsible for the additional cost, including purchase price and administrative fees. This remedy shall be in addition to any other legal remedies available to DHS. Prior written notice shall not be required where, in the opinion of DHS, the public health, safety, or welfare is endangered by the act or omission of the Contractor.

28. **PERFORMANCE-PAYMENT BOND.** The Contractor shall furnish a Performance-Payment Bond (or other security satisfactory to DHS) in an amount equal to one hundred percent (100%) of the Agreement Price or, if an Agreement Price is not established, the estimated value of this Agreement, as derived from the Contractor's solicitation response, as security for the Contractor's faithful performance of its obligations hereunder, including payment of all persons performing labor or furnishing materials for the Contractor, and payment of all other debts incurred in its performance.
- The Performance-Payment Bond Form (Attachment B), which the Contractor will be required to execute, is attached to this Agreement, and fully incorporated herein by this reference. The State shall not execute this Agreement until the Performance-Payment Bond Form is delivered to and approved by DHS.
29. **ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, constitutes the final and complete agreement of the Parties in connection with the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, by the Parties. This Agreement shall be construed as a fully integrated Agreement. There are no

warranties, representations, or agreements among the parties in conjunction with the subject matter hereof, except as specifically set forth or referred to herein.

30. APPARENT AGENCY. The Contractor shall not take any action, or make any omission, that may imply, or cause others to reasonably infer, that the Contractor is acting as DHS' agent in any matter or in any way not expressly authorized by this Agreement.

31. RESPONSIBILITY FOR ACTIONS. The Contractor shall be solely responsible for its actions and those of its agents, employees, or Subcontractors under this Agreement, and neither the Contractor nor any of the foregoing parties has authority to act or speak on behalf of DHS.

32. SECURITY OF PREMISES, EQUIPMENT, DATA AND PERSONNEL. During the delivery of Goods and/or the performance of Services under this Agreement, the Contractor may have access to the personnel, premises, equipment, and other property, including data files, information, or materials (collectively referred to as "data") belonging to DHS. The Contractor shall preserve the safety, security, and the integrity of the personnel, premises, equipment, data and other property of DHS, in accordance with the instruction of DHS. The Contractor shall be responsible for damage to DHS' equipment, workplace, and its contents, or for the loss of data, when such damage or loss is caused by the Contractor, Contracted Personnel, or Subcontractors, and shall reimburse the State accordingly upon demand. This remedy shall be in addition to any other remedies available to DHS by law or in equity.

33. PROVISION OF GOODS AND/OR SERVICES. The Contractor shall provide the Goods and/or Services with all due skill, care, and diligence, in accordance with accepted industry practices and legal requirements, and to DHS satisfaction; DHS' decision in that regard shall be final and conclusive. DHS may inspect, observe, and examine the Quality of the Goods provided and/or the performance of the Services rendered on DHS premises at any time. DHS may inspect, observe, and examine the performance of Contractor's Services at reasonable times, without notice, at any other premises.

If DHS notifies the Contractor that any part of the Goods and/or Services rendered are inadequate or in any way differ from the Agreement requirements for any reason other than as a result of DHS' default or negligence, the Contractor shall, at its own expense, deliver replacement Goods which meet the satisfaction of DHS, and/or re-schedule and perform the work correctly within such reasonable time as DHS specifies. DHS may implement a Corrective Action Plan (CAP) in an effort to remedy performance deficiencies. This remedy shall be in addition to any other remedies available to DHS by law or in equity.

34. CONTRACTOR PERSONNEL. DHS reserves the right to refuse to admit to DHS premises any person employed or contracted by the Contractor whose admission in the opinion of DHS would be undesirable.

If requested by DHS, the Contractor shall provide a list of the names and addresses of all Contractor's employees, Contracted Personnel, or Subcontractor's employees who may at any time require admission to DHS premises in connection with the delivery of Goods to be provided and/or performance of Services, specifying each such person's connection to the Contractor, the role the person is to take in the performance of the Agreement, and other particulars as DHS may require.

35. BACKGROUND OR CRIMINAL HISTORY INVESTIGATION. Prior to the commencement of any Services under this Agreement, DHS may request a background or criminal history investigation of any of the Contractor's employees, Contracted Personnel, and Subcontractor's employees, who will be providing Services to DHS under the Agreement. If any of the stated personnel providing Services to DHS under this Agreement is not acceptable to DHS in its sole opinion as a result of the background or criminal history

investigation, DHS may either request immediate replacement of the person in question, or immediately terminate this Agreement and any related Service Agreement.

- 36. PERFORMANCE.** Work under this Agreement shall be performed in a timely, professional, and diligent manner by qualified and efficient personnel, and in conformity with the strictest quality standards mandated or recommended by all generally-recognized organizations establishing quality standards for work of the type to be performed hereunder. The Contractor shall be solely responsible for controlling the manner and means by which it and its Contracted Personnel or its Subcontractors deliver Goods and/or perform the Services, and the Contractor shall observe, abide by, and perform all of its obligations in accordance with all legal requirements and State or Agency work rules.

Without limiting the foregoing, the Contractor shall control the manner and means of the Services so as to deliver the Goods and/or perform the Services in a reasonably safe manner and comply fully with all applicable codes, regulations, and requirements imposed or enforced by any government agencies, including all applicable requirements of the Occupational Safety and Health Administration (OSHA) and all safety codes and procedures mandated or recommended by insurance underwriting organizations and all generally recognized organizations establishing safety standards, including without limitation the National Fire Protection Association, for work of the type to be performed hereunder. Notwithstanding the foregoing, any stricter standard provided in plans, specifications or other documents incorporated as part of this Agreement shall govern.

- 37. SHIPPING AND RISK OF LOSS.** Except as otherwise specified herein, Goods shall be shipped, F.O.B. Destination, and DHS shall accept legal title of Goods at the point of delivery. Freight charges shall not be paid by DHS, but rather shall be prepaid by the Contractor. Unless otherwise specified, the Contractor shall determine the mode of freight, and shall accept responsibility for payment of freight charges and processing of freight claims.

The Contractor shall bear all risks of loss, injury, or destruction of the Goods ordered herein that occur prior to delivery. Such loss, injury, or destruction shall not release the Contractor from any obligation hereunder.

- 38. IDENTIFICATION.** All invoices, packing lists, packages, shipping notices, instruction manuals, and other written documents affecting an order hereunder shall contain the applicable State Purchase Order number. Packing lists shall be enclosed in each and every box or package shipped pursuant to an order, indicating the contents therein. Standard commercial packaging, packing and shipping containers shall be used. If requested by DHS, all shipping containers shall be legibly marked or labeled on the outside with State Purchase Order number, product description, and quantity, or as otherwise directed by DHS.

- 39. WARRANTY & LIENS.** Goods delivered or Services rendered shall be strictly in accordance with the order placed and may not deviate in any way from the terms, conditions or specifications of this Agreement, without the prior written approval of DHS. Equipment, materials, or supplies delivered under this Agreement are subject to inspection and testing upon receipt.

The Contractor warrants that the Goods provided shall conform to the specifications in this Agreement, are fit and sufficient for the purpose manufactured, of good material and workmanship, and free from defect. Goods offered must be new and unused and of the latest model or manufacture, unless otherwise specified by DHS. Items shall be equal in quality and performance to the standards indicated herein. Goods delivered that do not conform to the Agreement terms, conditions, and specifications may be rejected and returned at the Contractor's expense. The Contractor shall assign to the DHS its right to

recover under any warranties applicable to the Goods offered. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance, and use desired.

Services provided under this contract must conform to the specifications outlined in the original solicitation and in all documents incorporated under this Agreement. Deviations in Services provided may only be made with written agreement between the State and the Contractor.

The Contractor warrants and represents that all Goods ordered hereunder are free and clear of all liens, claims or encumbrances of any kind.

- 40. RECEIPT OF GOODS.** DHS' receipt of Goods upon delivery is for the sole purpose of identification and Inspection, which shall not be construed as Acceptance of the Goods if they do not conform to contractual requirements. If there are any apparent defects in the Goods at the time of delivery, DHS shall promptly notify the Contractor of its rejection of said Goods. Without limiting any other rights, DHS, at its option, may require the Contractor to:

40.1 Repair or replace any or all of the defective and rejected Goods at Contractor's expense,

40.2 Refund the price of any or all of the defective and rejected Goods, or

40.3 Accept the return of any or all of the defective and rejected Goods.

If rejected, the Goods shall remain the property of the Contractor.

- 41. CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:

41.1 Worker's compensation insurance, as required under Chapter 102, Wisconsin Statutes, for all of the Contractor's employees engaged in the work performed under this Agreement;

41.2 Commercial liability, bodily injury and property damage insurance against any claim(s) that may occur in carrying out the terms of this Agreement, with a minimum coverage of one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations;

41.3 Motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out the terms of this Agreement, with a minimum coverage of one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage; and

41.4 A Certificate of Insurance, showing up-to-date coverage, shall be on file in the Agency before the Agreement may commence.

DHS reserves the right to require higher or lower insurance limits when warranted.

- 42. CONTRACTOR INDEMNIFICATION.** Contractor shall hold DHS harmless and shall indemnify the State, its Agencies, officers, and employees against any and all claims, suits, actions, liabilities, and costs of any kind, including attorney's fees, for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees, or Subcontractors.

- 43. PATENT INFRINGEMENT AND LABOR STANDARDS.** The Contractor guarantees that any items provided to DHS hereunder were manufactured or produced in accordance with applicable federal labor laws, and that the sale or use of said items shall not infringe any United States patent. The Contractor shall, at its own expense, defend every suit brought against the State for any alleged patent infringement by reason of the sale or use of such items, provided that the Contractor is promptly notified of such suit, and

is given all related documents. The Contractor shall pay all costs, damages, and profits recoverable in any such infringement lawsuit.

44. **INDEPENDENT CONTRACTOR.** The Contractor shall act as an independent Contractor in delivering all Goods to and/or in performing all Services under this Agreement and, except as otherwise outlined herein, shall maintain complete control over its employees, Contracted Personnel, and Subcontractors, if any.
45. **STATE EMPLOYEES.** The Contractor may not contract with or employ a current State employee, including a member of any State Board or Commission, or an individual retained as a full-time contractor by the State, during the term of this Agreement.
46. **ANTITRUST ASSIGNMENT.** By entering into this Agreement, the Contractor conveys, sells, assigns, and transfers to the State all rights, title, and interest in and to all causes of action, claims, and demands of whatever nature it may now have or hereafter acquire under the antitrust laws of the United States and the State, relating to the particular Goods or Services purchased or acquired by the State under this Agreement.
47. **FOREIGN CORPORATION.** The Contractor shall conform to all the requirements of Chapter 180, Wis. Stats., relating to a foreign corporation (i.e. any corporation other than a Wisconsin corporation), and shall possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a said certificate.
48. **OWNERSHIP RIGHTS.** Unless an ownership interest is granted herein to the Contractor, all data, documentation, reports or other writings in any format, and all innovations designed, developed, or delivered to DHS under this Agreement shall become the property of DHS and shall not be copyrighted, trademarked, or patented by the Contractor. DHS reserves the right to reproduce, distribute, and use any submitted report, data, material, any software or modifications, and any associated documentation provided hereunder.
49. **PROMPT PAYMENT.** DHS shall pay properly submitted Contractor invoices within thirty (30) days of receipt, providing that the Goods or Services to be provided to DHS have been delivered, rendered, or installed (as the case may be), and accepted as specified in this Agreement and all documents incorporated herein by reference.

A properly submitted invoice is defined as one that is submitted in accordance with instructions contained on the State's Purchase Order, includes a reference to the proper Purchase Order number, and is submitted to the proper address for processing.

If DHS fails to pay a properly submitted invoice within thirty (30) days of receipt, it shall pay a late payment penalty as provided in s. 16.528, Wis. Stats. If DHS declares a good faith dispute in regard to an invoice pursuant to s.16.528 (3)(e), Wis. Stats., it may pay any undisputed portion of said invoice, and be exempt from the prompt payment requirement for the disputed portion until the dispute is resolved.
50. **STATE TAX EXEMPTION.** DHS is exempt from payment of Wisconsin sales or use tax on all purchases.
51. **PROMOTIONAL ADVERTISING AND NEWS RELEASES.** Reference to or use of the State of Wisconsin, the Great Seal of the State, the Wisconsin Coat of Arms, any Agency or other sub-units of the State government, or any State official or employee, for commercial promotion is strictly prohibited. News releases or release of broadcast e-mails pertaining to this Agreement shall not be made without prior written approval of DHS.

The Contractor may identify the State of Wisconsin as a client when the Contractor provides a list of Contractor's clients.

52. **RECORDS, RECORDKEEPING AND RECORD RETENTION.** Under §19.36 (3), Wis. Stats., all records of the Contractor that are produced or collected under this Agreement are subject to disclosure pursuant to a public records request. The Contractor shall establish and maintain adequate records of all documentation developed or compiled and expenditures incurred under this Agreement. All expenditure records shall be kept in accordance with Generally Accepted Accounting Procedures (GAAP). All procedures shall be in accordance with federal, State, and local laws or ordinances. The Contractor, following final payment, shall retain all records produced or collected under this Agreement for three (3) years.
53. **ASSIGNMENT OF AGREEMENT.** The Contractor shall provide prior written notice to DHS before assigning this Agreement to another party. DHS reserves the right to withhold approval of any such assignment. The terms and conditions of this Agreement, as well as any rights obligations and liabilities associated with such, shall survive any and all assignments, mergers, or acquisitions by a third party until cancelled in writing by both parties.
54. **FORCE MAJEURE.** Neither party shall be in Default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case, the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.
55. **WORK CENTER CRITERIA.** The Contractor shall implement processes that allow DHS to satisfy its obligation to purchase Goods and Services produced by Work Centers certified under the State's Work Center Law, s. 16.752, Wis. Stats. The Contractor shall include products provided by Work Centers in its catalog for DHS and block the sale of comparable items to DHS.

56. AFFIRMATIVE ACTION PLAN (AA) AND CIVIL RIGHTS COMPLIANCE (CRC).

56.1 Affirmative Action Plan

As required by Wisconsin's Contract Compliance Law (s. 16.765, Wis. Stats.), every Contractor contracting with the State must agree to equal employment and affirmative action policies and practices in its employment programs. The Contractor must submit an Affirmative Action Plan to the State in accordance with the Wisconsin Office of Contract Compliance instructions posted on the following website: <http://vendornet.state.wi.us/vendornet/contract/contcom.asp>

An [affirmative action plan](#) is required from a Contractor who receives a state contract over \$50,000 AND who has a work force of 50 or more [employees](#) as of the award date, unless the Contractor is [exempt by established criteria](#). The plan is due to the State within fifteen (15) working days of the award date of the State's contract. The plan must have been prepared or revised not more than one year prior to the award date of the contract. Universities, other states and local governments, except those of the State of Wisconsin who receive state contracts of over \$50,000, must submit affirmative action plans in the same manner as the Contractor.

The Contractor must submit its affirmative Action plan or request for exemption from filing an affirmative action plan in accordance to the Wisconsin Office of Contract Compliance within fifteen (15) working days to:

Department of Health Services, Division of Enterprise Services
Bureau of Strategic Sourcing
Affirmative Action Plan/CRC Coordinator
1 West Wilson Street, Room 655
P.O. Box 7850
Madison, WI 53707

Compliance with the requirements of the AA Plan will be monitored by the DHS Office of Affirmative Action and Civil Rights Compliance.

56.2 Civil Rights Compliance

Contractors receiving federal and/or state funding to administer programs, Services and activities through DHS must file a Civil Rights Compliance Letter of Assurance (CRC LOA) for the current compliance period regardless of the number of employees and the amount of funding received. For contracts for the provision of services to clients, the Contractor must comply with all Federal Civil Rights laws applicable to service delivery requirements. All Contractors with twenty-five (25) or more employees AND who receive contracts in excess of \$25,000 in annual value must complete a Civil Rights Compliance (CRC) Plan; however, submission of the CRC Plan is not required. The CRC Plan is to be kept on file and made available upon request to any representative of DHS. For technical assistance on all aspects of the Civil Rights Compliance, the Contractor is to contact the DHS' AA/CRC Office at the above address.

Contractors subcontracting federal or state funding to other entities must obtain a CRC LOA from their subcontractors. The CRC LOA must be kept on file and produced upon request or at the time that an on-site-monitoring visit is conducted. Subcontractors with twenty-five (25) or more employees AND who receive over \$25,000 in annual contract funding must complete CRC Plan. The CRC Plan to be kept on file and produced upon request by the DHS AA/CRC Office, a representative of the DHS or at the time the Contractor conducts an on-site monitoring visit. All Contractors must comply with the CRC Plan requirements

within fifteen (15) working days of the award date of the agreement or contract in accordance with the procedures outline on the following website:
<http://dhs.wisconsin.gov/civilrights/CRC/requirements.htm>.

The Contractor agrees that it will comply with all Equal Opportunity Requirements under Title VI and VII of the Civil Rights Act of 1964, Sections 503 and 504 of the Rehabilitation Act of 1973, Title VI and XVI of the Public Health Service Act, the Age Discrimination in Employment Act of 1967, the Age Discrimination Act of 1975, the Omnibus Reconciliation Act of 1981, the American with Disabilities Act (ADA) of 1990, the Wisconsin Fair Employment Act and applicable amendments and other Federal Civil Rights laws listed in the CRC Plan. If the Contractor complied with the State's CRC Plan Requirements during the previous year for a contract that covers the applicable compliance period, the Contractor is deemed to be in compliance for the applicable period. The Contractor will further insure that:

No otherwise qualified person will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any manner on the basis of age, race, religion, color, sex, national origin or disability (USDA-FNS program funding protects political belief or political affiliation when Food Stamp Act funding is received). This policy covers eligibility for and access to service delivery, and treatment in all programs and activities. All employees of the Provider are expected to support goals and programmatic activities relating to nondiscrimination in service delivery.

No otherwise qualified person shall be excluded from employment, be denied the benefits of employment or otherwise be subjected to discrimination in employment in any manner or term of employment on the basis of age, arrest record, color, conviction record, disability, or association with a person with a disability, honesty testing, genetic testing, marital status, military service membership, national origin or ancestry, political beliefs, pregnancy or childbirth, race, religion, sex, sexual orientation, and use or non-use of lawful products outside of working hours. Unless otherwise exempted under Executive Order 11246, as amended, and Section 503 of the Rehabilitation of 1973, or if the Provider is considered to be a Federal Contractor, the Contractor assures that it will comply with these requirements. All employees are expected to support goals and programmatic activities relating to non-discrimination in employment.

The Contractor shall post its Equal Opportunity Policy, the name of the Equal Opportunity Coordinator, and the Limited English Proficiency (LEP) Coordinator when the Contractor is engaged in the provision of service delivery. The discrimination complaint process must be posted in conspicuous places available to applicants and recipients of services. The complaint process notice shall be translated into the major primary languages of the Limited English Proficient (LEP) participants in the service area when the Contractor is engaged in providing services. The notice will announce the availability of free oral interpretation for services if needed. The Contractor shall not request interpretation services from family members, friends, and minors. However, the participant may request a family member or friend to serve as interpreter. Under no circumstance will a minor be allowed to serve as interpreter.

The Contractor agrees to comply with the State's guidelines for ensuring Access and Equal Opportunity in Service Delivery and Employment by Recipients of Federal and State Funded Programs, Services and Activities issued by the State of Wisconsin, Department of Health Services, Department of Children and Families

and Department of Workforce Development; which can be found on the following website: <http://dhs.wisconsin.gov/civilrights/CRC/requirements.htm>.

The State will monitor the Civil Rights Compliance of the Contractor. The State may conduct reviews to ensure that the Contractor is ensuring compliance by its subcontractors or grantees according to guidelines in the State of Wisconsin Department of Health Services, Department of Children and Families, and Department of Workforce Development CRC Plan requirements. The Contractor agrees to comply with Civil Rights monitoring reviews, including allowing the examination of records and relevant files maintained by Contractor, as well as interviews with staff, clients, and applicants for services, and where applicable, subcontractors, grantees, and referral agencies. The reviews will be conducted according to Department procedures. The State will also conduct reviews to address immediate concerns of complainants.

However, where the State has a direct contract with another Contractor's subcontractor, the Contractor need not monitor the Sub-contractor's or Sub-grantee's compliance with the requirements of the CRC Plan.

The Contractor agrees to cooperate with the State in developing, implementing, and monitoring corrective action plans that result from complaint investigations or monitoring efforts. The Contractor agrees that it will:

- hire staff with non-English language skills, sign language skills and or provide staff with special translation or sign language skills training, or find qualified persons who are available within a reasonable period of time and who can communicate accurately, and effectively with limited or non-English speaking or speech or hearing-impaired clients at no cost to the client when the Contractor is engaged in direct service delivery;
- provide reasonable accommodations or language assistance to the clients during the application process, in the receipt of services, and in the process of complaint or appeals when the Contractor is engaged in direct service delivery;
- train staff in human relations techniques, sensitivity to persons with disabilities and cultural sensitivity/cultural competency and Civil Rights laws;
- make facilities accessible, and provide reasonable accommodations as appropriate to its employees and or visitors, e.g., by modifying ramps, doorways, elevators, or ground floor rooms, providing Braille, large print or taped information for the visually or cognitively impaired; and
- post and/or make available vital informational material in languages and formats appropriate to the needs of the client population when Contractor is engaged in direct service delivery.

56.3 Failure to comply with the Section 56 provisions may result in the following consequences:

- termination of this Agreement as provided in Section 10, Agreement Cancellation, herein,
- designation of the Contractor as "ineligible" for future consideration as a responsible, qualified bidder or proposer for State contracts, or
- withholding of payment(s) due under the Agreement until the Contractor is in compliance.

PARTIES' CONTACT INFORMATION. Communications to either the Contractor or DHS shall be provided in the manner(s) indicated herein. The parties reserve the right to make changes to the contact information by giving thirty (30) days' written notice to the other.

Contractor Program Manager	Name: Address: Phone: E-mail:
DHS Program Manager	Name: Address: Department of Health Services 1 W. Wilson St, Room , Madison, WI 53707 Phone: E-mail:

IN WITNESS WHEREOF, DHS and the Contractor have executed this Agreement as of the day and year first above written.

Contractor or Designee (Authorization attached if Designee)	Date
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Printed Name _____

DHS or Designee (Authorization attached if Designee)	Date
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DEFINITIONS

Words and terms shall be given their ordinary and usual meanings. Unless negotiated otherwise by the parties, where capitalized, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

“Acceptance” means a manifestation of assent by the State to the terms, Services, Goods or other items offered by the Contractor under the Agreement. Unless the particular methodology and measure of Acceptance of the offered terms, Services, or Goods is set forth herein, Acceptance shall occur, in the case of Goods, after delivery is taken and the Goods are inspected, and payment has been made; or in the case of Services, those Services have been provided to the State’s satisfaction and acceptance, and payment has been made.

“Agency” means an office, department, agency, institution of higher education, association, society or other body in the State of Wisconsin government created or authorized to be created by the State Constitution or any law, which is entitled to expend moneys appropriated by law, including the legislature and the courts.

“Business Day” means any day on which the Contracting Agency is open for business, generally Monday through Friday unless otherwise specified in this Agreement.

“Confidential Information” means all tangible and intangible information and materials, including all Personally Identifiable Information, being disclosed in connection with this Agreement, in any form or medium (and without regard to whether the information is owned by the State or by a third party), that satisfies at least one of the following criteria: (i) Personally Identifiable Information; (ii) non-public information related to the State’s employees, customers, technology (including data bases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; or (iii) information expressly designated as confidential in writing by the State. Confidential information includes all information that is restricted or prohibited from disclosure by State or federal law.

“Contractor” means an individual, business, or agency that enters into a written contractual Agreement to provide Products or Services to the State. A Contractor may be a service provider, a supplier of products, a manufacturer, or a consultant.

“Contracted Personnel” means Contractor’s employees or other personnel (including officers, agents and Subcontractors) provided by the Contractor to perform work under this Agreement.

“Contracting Agency” means the State Agency entering into this Agreement on behalf of the State.

“Day” means calendar day unless otherwise specified in this Agreement.

“DHS premises” means any and all physical locations through which DHS conducts business or renders services to its clients including, but not limited to, 1 West Wilson, Madison, Wisconsin, and all institutions affiliated with and under the control of DHS.

“Default” means the omission or failure to perform a contractual duty or provide Goods or Services as contractually required.

“Goods” means articles of trade or items of merchandise, supplies, raw materials, or finished products, and may also include incidental or related Services as the situation may require.

“Inspection” means a careful examination of Goods, commodities, or items produced under this Agreement in order to determine their fitness for use.

“Personally Identifiable Information” means an individual’s last name and the individual’s first name or first initial, in combination with and linked to any of the following elements, if that element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable: (a) the individual’s Social Security number; (b) the

individual's driver's license number or state identification number; (c) the number of the individual's financial account, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual's financial account; (d) the individual's DNA profile; or (e) the individual's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation, and any other information protected by State or federal law.

"Municipality" includes a county, city, village, town, school district, federally recognized Indian tribe, school board of directors, sewer district, drainage district, vocational, technical, and adult education district or other public or quasi-public corporation, board, or other body having authority to award public contracts within the State.

"State Purchase Order" means the State's standard document of purchase.

"Services" means all actions, recommendations, plans, research, customizations, modifications, documentation and maintenance and support provided by the Contractor necessary to fulfill that which the Contractor is obligated to accomplish under this Agreement.

"State" means the State of Wisconsin.

"Subcontract" means an agreement, written or oral, financial or non-financial, between the Contractor and any other party to fulfill the requirements and performance obligations of this Agreement.

"Subcontractor" means an entity that enters into an agreement with the Contractor for the purpose of delivering Goods or providing Services to the State.

"Work Center" means a charitable organization or nonprofit institution which is licensed under s. 104.07 and incorporated in this State or a unit of county government which is operated for the purpose of carrying out a program of rehabilitation for severely handicapped individuals and for providing the individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature, and which is engaged in the production of materials, supplies or equipment or the performance of contractual Services in connection with which not less than 75% of the total hours of direct labor are performed by severely handicapped individuals.

NOTES: Topics to be Considered that are not part of the Standard Contract

Tim's List of possible additional clauses to add to this format.

The DHS Business Area, OLC, or BFS may require or suggest these other topics to be included into an individual contract/agreement.

1. Audit Language: If necessary, meet with OIG staff to work this out. We need to have it in this model but there are variables in the requirements based on the type of project or (sometimes) how it's funded.
2. Allowable cost definition (including how much profit can be billed by a for-profit contractor).
Example: "...and shall meet the requirements of this Agreement, of the HSRS Handbook as updated quarterly; of the Divisions Numbered Memo Series; of the Allowable Cost Policy Manual and Financial Management Manual, as set forth in or established by the Department under the authority granted to it by State and Federal statutes, rules, and regulations and court orders."
3. Miscellaneous odd provisions: we need a field where we can add obscure requirements imposed by (usually) specific federal agencies. These would not be fixed in the model but only drafted and inserted when required. For instance, anything funded with USDA funds requires a host of compliances including items such as environmental impact, etc.
4. Special Conditions: sometimes during contract negotiations, issues arise which lead us to imposing special conditions (sometimes affecting payment) not specified in the RFP or the contractor's initial response or bid or any other of the documents otherwise incorporated into this instrument. We should have a field where we can draft these 'special conditions' which would all be narrative and tailored for the one engagement. Again, these would need to be drafted by the program/business area as a result of conditions unique to each situation. The Contract Administrator would normally compose these – but in certain cases, BSS could as well.
5. Measurable Outcomes: We need to be clear in incorporating them by reference or by writing them into section 4 of this contract model. If they're in the RFP and in the vendor's response, the language we have here is fine because it incorporates it all. In order for this to be enforceable, however, we have to alter the RFP/B templates to capture the outcomes, their measurements, and our standard by which we would consider them met.